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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,198	12/15/2005	David Murray McRose	010200-127	4769

7590 09/08/2009  
Attention: James A. Henricks  
Henricks, Slavin & Holmes LLP  
840 Apollo Street, Suite 200  
El Segundo, CA 90245-4737

EXAMINER
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WEAVER, SUE A

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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09/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/529,198

**Applicant(s)**

MELROSE, DAVID MURRAY

**Examiner**

Sue A. Weaver

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-08)
- Paper No(s)/Mail Date 6/27/05 6/15/09
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the longitudinal axis claimed, the pressure panel being of variable width as claimed in claim 8, the angle of more than 10 degrees to a plane orthogonal to the longitudinal axis as claimed in claim 17, the angle between 30 and 45 degrees and initiator angle at least 10 degrees less as claimed in claim 18, the vacuum panel claimed in claim 23, the alternate flutes inclined at a greater or lesser angle relative to the longitudinal axis claimed in claim 26, the recessed instep being adjacent to an inside border of the standing ring and being displaced higher with in the container than an upper border of the pressure panel as claimed in claim 30 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

## **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant's claims are replete with functional language such as "adapted to" and "being capable" without sufficient structure set forth to effect such desired functions. At the outset it is noted that applicant claims a container which may be any material including glass and without flexible walls with which to achieve folding. Further more an initiator portion and control portion are claimed with out any particular structure to achieve the related functions claimed. Insofar as the claims are set forth the initiator portion is merely that portion which responds first to pressure of folding forces. It may also be noted that there isn't any structure set forth for the container to receive a cap or a cap positively recited for the container to be "capped" as claimed in claims 5 and 21-23.

5. Claim 19 recites the limitation "the pressure panel" in line 3. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 20 recites the limitation "the pressure panel" in line 2. There is insufficient antecedent basis for this limitation in the claim.
7. Claim 22 recites the limitation "the internal walls" and "the capped container" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim.
8. In claims 23 and 24 it isn't clear how the vacuum panel portion relates to the pressure panel portion of claim 1.
9. Claim 23 recites the limitation "said base" in line 2. There is insufficient antecedent basis for this limitation in the claim.
10. Claim 24 recites the limitation "the base" in line 2. There is insufficient antecedent basis for this limitation in the claim.
11. Claim 25 recites the limitation "the base" in line 2. There is insufficient antecedent basis for this limitation in the claim.
12. Claim 29 recites the limitation "the pressure panel" in line 2. There is insufficient antecedent basis for this limitation in the claim.
13. Claim 30 recites the limitation "the pressure pane;" in line 4. There is insufficient antecedent basis for this limitation in the claim.
14. Claim 33 recites the limitation "the pressure panel" in line 5. There is insufficient antecedent basis for this limitation in the claim.
15. Claim 35 recites the limitation "the widest point: and "the pressure panel" in line 2. There is insufficient antecedent basis for this limitation in the claim.
16. In claim 30 it isn't understood how a recessed instep surrounding the pressure panel can be displaced higher within the container than an upper border of the pressure

panel, particularly if it is adjacent the standing ring. It would appear that it would have to be lower.

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 1-3,7, 8, -15,17,18,29,and 31-35 insofar as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurschman '655.

19. Hurschman teaches a plastic container with a top portion having an opening as near 19 with a closure 15, a sidewall portion 25 and a collapsible base portion 12, having control portion 29 and a initiator portion 26 which responds to pressure before the control portion to collapse as shown in figures 3 and 4. Member 28 may be considered a hinge portion while the standing ring is formed at the bottom of 27 as shown in figure 4.

20. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Owsen '902.

21. To have optionally formed the initiator and control portions of substantially the same angle would have been obvious in view Owsen.

22. Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 1 above, and further in view of Chang '510.

23. To have provided the base portion with flutes in the manner of Chang would have been obvious.

24. Claim 28 rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 25 above, and further in view of Tauschinski et al '002.
25. To have optionally formed the folding base portion with concave flutes would have been obvious in view of Tauschinski et al as shown in figure 8 for example.
26. Claims 1, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker '789 in view of Hirschman '655.
27. To have provided the recessed base portion of Parker with the initiator and control portions taught by Hirschman for ease of reversal would have been obvious.
28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents show other flexible constructions.
29. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

on \_\_\_\_\_.  
(Date)

Typed or printed name of person signing this certificate:

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Signature: \_\_\_\_\_

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**Certificate of Transmission**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. ( ) \_\_\_\_\_ - \_\_\_\_\_ on \_\_\_\_\_.  
(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_

Registration Number: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Anthony Stashick\_. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sue A. Weaver/  
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